

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in compliance with D.N.J. LBR 9004-1(b)

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Counsel for CR West Ashley, LLC

In re:

Bed Bath & Beyond Inc., et al.,

Debtors.¹

Case No. 23-13359

Chapter 11

Judge: Hon. Vincent F. Papalia

**LIMITED OBJECTION OF CR WEST ASHLEY, LLC TO
CURE AMOUNT IN CONNECTION WITH POTENTIAL ASSUMPTION AND
ASSIGNMENT OF UNEXPIRED LEASE AND RESERVATION OF RIGHTS**

CR West Ashley, LLC ("CR West Ashley"), through its undersigned counsel,
respectfully submits this limited objection to the *Notice to Contract Parties to Potentially*

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

Assumed Executory Contracts and Unexpired Leases [D.I. 714] (“Notice”), and in support hereof states as follows:

Background

1. On April 24, 2023 (“Petition Date”), each of the above-captioned debtors (“Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. On June 13, 2023, the Debtors filed the Notice, which states that, “pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contract or agreement listed on **Exhibit A** to which you are a counterparty, upon approval of the Sale Transaction.” Notice, p.2 (emphasis in original).²

3. Exhibit A to the Notice includes a lease with CR West Ashley (incorrectly described on the Notice as “T West Ashley SC, LLC”, which is the predecessor landlord of this location to CR West Ashley) for the premises located at 946 Orleans Road, Charleston, SC and described in the Notice as “Lease Agreement – 946 Orleans Road, Charleston, SC” (“Lease”). Exhibit A to the Notice asserts that the cure cost for the Lease is \$64,326.13.

4. In addition, on May 22, 2023, the Court entered the *Order (I) Establishing Procedures to Sell Certain Leases, (II) Approving the Sale of Certain Leases, and (III)*

² Capitalized terms in the Notice have the meanings set forth in the Court’s order approving bidding procedures [D.I. 92] (the “Bidding Procedures Order”).

Granting Related Relief [D.I. 422] (“Lease Sale Procedures Order”). The Lease Sale Procedures Order, among other things, approves additional sale procedures related to the Debtors’ potential sale of leases, and permits landlords to submit bids in connection with their leases, including credit bids of their undisputed cure amounts.

Limited Objection

5. CR West Ashley asserts that the correct cure amount for the Lease, as of the date of filing this limited objection, is **\$135,648.52** (“Correct Cure Amount”), which includes pre-Petition Date rent, real estate taxes, insurance, and CAM charges, as well as post-Petition Date CAM and insurance charges due and owing under the Lease.

6. If the Lease is to be assumed or assumed and assigned, the Debtors or the assignee should be required to pay CR West Ashley the Correct Cure Amount in accordance with section 365(b) of the Bankruptcy Code, together with any other amounts accruing under the Lease between the date of this filing and the date that the Lease is actually assumed or assumed and assigned.

7. In addition to cure costs, CR West Ashley is entitled to adequate assurance of future performance by any assignee under section 365(f)(2)(B) of the Bankruptcy Code. As a shopping center lease, this also requires satisfaction of the provisions of section 365(b)(3), which requires adequate assurance:

- (A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating

performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

- (B) that any percentage rent due under such lease will not decline substantially;
- (C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement related to such shopping center; and
- (D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

11 U.S.C. § 365(b)(3).

8. CR West Ashley objects to the extent any proposed assignment of the Lease fails to comply with any of the foregoing requirements under section 365(b)(3) of the Bankruptcy Code.

Reservation of Rights

9. CR West Ashley further reserves the right to amend and/or supplement this objection and the Correct Cure Amount. Further, while the Lease Sale Procedures Order is not referenced in the Notice, CR West Ashley further reserves all rights with respect thereto. All objections and reservations asserted herein apply with equal force to any proposed sale, assumption or assignment under the Lease Sale Procedures Order, to the extent applicable.

Conclusion

WHEREFORE, CR West Ashley respectfully requests that the Court sustain this limited objection by conditioning assumption and assignment of the Lease on: (1) payment to CR West Ashley of the Correct Cure Amount plus any other amounts accruing under the Lease between the date of this filing and the date that the Lease is actually assumed or assumed and assigned; and (2) provision of adequate assurance of future performance, including without limitation as required by section 365(b)(3) of the Bankruptcy Code, and grant any other and further relief that the Court may deem appropriate.

Dated: June 16, 2023

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